

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

MONDO VALDEZ,

Plaintiff,

v.

WASHINGTON STATE  
PENITENTIARY, WASHINGTON  
CORRECTION CENTER, STAFFORD  
CREEK CORRECTION CENTER,  
MONROE CORRECTIONAL  
COMPLEX, and DEPARTMENT OF  
CORRECTIONS,

Defendants.

NO. C10-5407 BHS/KLS

ORDER DENYING MOTION FOR  
THE APPOINTMENT OF COUNSEL

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the court is Plaintiff's motion for the appointment of counsel. Dkt. 8. Having carefully reviewed Plaintiff's motion, and balance of the record, the court finds, for the reasons stated below, that Plaintiff's motion should be denied.

**DISCUSSION**

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S.*

1 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is  
 2 discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may  
 3 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28  
 4 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*  
 5 *grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional  
 6 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]  
 7 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal  
 8 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting  
 9 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show  
 10 he has an insufficient grasp of his case or the legal issue involved and an inadequate ability to  
 11 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d  
 12 1101, 1103 (9<sup>th</sup> Cir. 2004).

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 15 That a *pro se* litigant may be better served with the assistance of counsel is not the test.  
 16 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the  
 17 issues involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development  
 18 of further facts during litigation. But, if all that was required to establish the complexity of the  
 19 relevant issues was a demonstration of the need for development of further facts, then  
 20 practically all cases would involve complex legal issues. *Id.*

21  
 22 Plaintiff maintains that he should be appointed counsel because he cannot afford  
 23 counsel, his imprisonment and confinement in segregation will greatly limit his ability to  
 24 litigate, the issues in this case are complex, he has limited access to the law library and limited  
 25  
 26

1 knowledge of the law, a trial will likely involve conflicting testimony that counsel would be  
2 better able to present, and he has made repeated unsuccessful efforts to obtain counsel. Dkt. 8.

3 Plaintiff's inability to obtain counsel and lack of legal skills are not exceptional  
4 circumstances which warrant the appointment of counsel. There is nothing in the motion for  
5 counsel presented to the court to indicate that a finding of exceptional circumstances is  
6 warranted in this case. While Plaintiff may not have vast resources or legal training, he meets  
7 the threshold for a pro se litigant. Concerns regarding investigation and discovery, an absence  
8 of legal training and limited access to legal materials are not exceptional factors, but are the  
9 type of difficulties encountered by many pro se litigants. There are also numerous avenues of  
10 discovery available to the parties through the Federal Rules of Civil Procedure during the  
11 litigation process.  
12

13  
14 Plaintiff filed his complaint *pro se* and he has demonstrated an adequate ability to  
15 articulate his claims *pro se*. Plaintiff has not demonstrated that the issues involved in this case  
16 are complex or that he has had any difficulties in expressing them. In his complaint, Mr.  
17 Valdez claims that various corrections officers have assaulted him and stolen his personal and  
18 legal property. These are not complex issues. Plaintiff has also not shown a likelihood of  
19 success on the merits.  
20

21 Accordingly, Plaintiff's motion to appoint counsel (Dkt. 8) is **DENIED**. The Clerk is  
22 directed to send copies of this Order to Plaintiff.

23 DATED this 9<sup>th</sup> day of September, 2010.

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26 Karen L. Strombom  
United States Magistrate Judge